

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services)	WT Docket No. 02-381
)	
)	

To: Wireless Telecommunications Bureau

**COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND
THE RURAL TELECOMMUNICATIONS GROUP**

Rural Telecommunications Group

**Organization for the Promotion and
Advancement of Small
Telecommunications Companies**

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Dated: February 3, 2003

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SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and the Rural Telecommunications Group (“RTG”) applaud the Commission’s effort to consider new wireless policies that will help deliver new and advanced Commercial Mobile Radio Services (“CMRS”) choices to rural America. OPASTCO and RTG urge the Commission to use this proceeding to carry out the Section 309(j) mandate of disseminating licenses to rural telephone companies so that they may, in turn, provide service to rural America. There are six basic ways in which the Commission can ensure that rural America is no longer on the wrong side of the “spectrum divide”: 1) Make more licensed spectrum available on an MSA/RSA basis; 2) Impose stricter buildout requirements along the lines of the cellular model (*i.e.*, “build it or lose it”) both prospectively and retroactively; 3) Ensure nondiscriminatory roaming arrangements that do not leave rural carriers incapable of survival; 4) Allow rural wireless carriers to invest their resources in infrastructure and spectrum rather than compliance with unfunded government mandates, by urging congressional appropriation of funds to meet these mandates; 5) Establish rules and policies that will create stability so that rural financial institutions continue to invest in rural wireless carriers; and 6) Encourage the development of new technologies such as software defined radios to be deployed in rural America. By following these steps, the Commission will ensure that rural customers receive *meaningful* coverage and services. OPASTCO and RTG pledge to work with the Commission to create successful spectrum allocation policies that will make certain that the economic benefits of these spectrum-based services reach rural areas.

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**COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND
THE RURAL TELECOMMUNICATIONS GROUP**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) and the Rural Telecommunications Group (“RTG”) hereby submit comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Inquiry* seeking comment on the effectiveness of its current regulatory tools in helping to facilitate the delivery of spectrum-based services to rural areas.¹ OPASTCO and RTG applaud the Commission for initiating one of the most important rural wireless proceedings in its history. Furthermore, we encourage the Commission to follow the successful spectrum allocation policies that it employed when licensing cellular and 700 MHz services, while examining new ways to promote the delivery of spectrum-based services to rural consumers.

As discussed below, there are six basic steps the Commission can take to ensure that rural America is no longer on the wrong side of the “spectrum divide”:

¹ *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Inquiry, WT Docket No. 02-381 (December 20, 2002).

- 1) Make more licensed spectrum available on an MSA/RSA basis;
- 2) Impose stricter buildout requirements along the lines of the cellular model (*e.g.*, “build it or lose it”) both prospectively and retroactively;
- 3) Ensure fair (nondiscriminatory) roaming arrangements that do not leave rural carriers incapable of survival;
- 4) Allow rural wireless carriers to invest their resources in infrastructure and spectrum rather than compliance with unfunded government mandates, by urging congressional appropriation of funds to meet these mandates;
- 5) Establish rules and policies that will create stability so that rural financial institutions are comfortable investing in rural wireless carriers; and
- 6) Encourage the development of new technologies such as software defined radio to be deployed in rural America.

I. Statement of Interest

OPASTCO is a national association representing approximately 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, collectively serve over 2.5 million consumers. Nearly one half of OPASTCO’s members provide some type of wireless service. All of its members are “rural telephone companies” as defined in 47 U.S.C. §153(37).

RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services such as cellular telephone service and Personal Communications Services (“PCS”) to their subscribers. RTG’s members are affiliated with rural

telephone companies and/or are small businesses serving or seeking to serve secondary, tertiary, and rural markets.

OPASTCO's and RTG's members have experienced tremendous frustration over the years as they have watched the rural areas they serve and live in fail to benefit fully from the telecommunications revolution as a result of the FCC's well-intentioned, but ineffective policies aimed at bringing the benefits of advanced telecommunications services to rural America. OPASTCO and RTG have lobbied vigorously on behalf of their members in proceeding after proceeding, urging the Commission to comport with its statutory mandate under Section 309(j) and adopt policies that will result in real world benefits to rural America. OPASTCO and RTG appreciate the Commission's recognition of a need to revamp its rural telecommunications policies, and appreciate the opportunity to participate in this proceeding.

II. The Commission Must Adhere to Its Statutory Mandate in a Flexible, Forward Looking Manner – New Rural Wireless Policies Must Be Adopted

As OPASTCO and RTG have continually emphasized over the past eight years, the FCC has a statutory obligation to ensure that new, spectrum-based technologies are deployed “in rural areas” and to use its regulations to “ensure that small businesses [and] rural telephone companies” have access to spectrum.² For far too long, the delivery of new, spectrum-based services to rural America has been an afterthought. OPASTCO and RTG encourage the

² See 47 U.S.C. §§ 309(j)(3)(A) and (4)(D). Section 309(j)(4) states, in pertinent part: “In prescribing regulations ... the Commission shall: (B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to *rural areas* ..., (C) prescribe area designations and bandwidth assignments that promote ... (ii) economic opportunity for a wide variety of applicants, including small businesses, *rural telephone companies* ... (D) ensure that small businesses, rural telephone companies, ... are given the opportunity to participate in the provision of spectrum-based services, and for such purposes, consider the use of tax certificates, bidding preferences, and other procedures ...” (*emphasis added*).

Commission to use this proceeding to develop a predictable national spectrum policy that promotes the efficient use of spectrum in rural areas of the country.

For some time, OPASTCO and RTG have been lobbying the FCC on behalf of rural wireless carriers to enforce Section 309(j) of the Communications Act of 1934, as amended (“Act”). Only recently has the Commission begun retooling its spectrum policies to take into account rural concerns, beginning with the Commission’s conclusions in its *Competitive Bidding Order*.³ In that proceeding, the Commission recognized that Section 309(j), as amended, requires it to disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies, and to promote the development and rapid deployment of new technologies to the public, including those residing in rural areas. The Commission concluded that the Section 309(j) mandate could best be met by service-specific small license areas.⁴ OPASTCO and RTG urge the Commission to take heed of its previous determinations regarding its statutory mandate as this distinctly rural proceeding progresses.

Moreover, as the Commission assesses how its spectrum policies could be modified to promote the deployment of wireless services in rural areas, it must not fail to consider the role played by technology. Future technological advances may dramatically affect how telecommunications services are provided in rural environments. For example, it is conceivable that at some point in the future, innovative solutions could allow rural telecommunications

³ *In re Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, WT Docket No. 97-82, FCC 00-274 (Aug. 14, 2000) (“*Competitive Bidding Order*”).

⁴ *Competitive Bidding Order* at ¶ 53.

⁵ *In re Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order*, Docket No. 93-253, 9 FCC Rcd 2348 at ¶ 230 (1994).

carriers – both wireless and wireline – to use spectrum to deploy wireless broadband services to rural consumers. Consequently, it is essential for the Commission to structure its spectrum rules so that they are flexible enough to account for the impact that future advances may have on how rural telecommunications carriers use spectrum to provide service to their customers going forward.

III. Adoption of an MSA/RSA Licensing Approach is Necessary for Rural Areas to Receive the Full Benefits of Commission Spectrum Allocation Policies

The Commission has long recognized that rural markets are different than urban markets and that the Commission's rules should be adjusted accordingly to ensure that rural areas receive the economic benefits of spectrum-based services.⁵ In general, large carriers with a nationwide footprint target more profitable urban areas while carriers with roots in rural communities specialize in serving less profitable rural areas. As experts in the provision of telecommunications in rural areas, OPASTCO and RTG members urge the Commission to be aware of the physical and demographic differences between rural and urban regions as it examines existing wireless policy and when creating any new wireless policies.

The demographics and physical characteristics of rural and urban areas differ dramatically. Even utilizing wireless technologies, rural areas, with their vast spaces, low population densities, difficult terrain, and harsh weather, remain expensive and challenging locations to serve. Nationwide carriers focus their deployment efforts on cities, suburban areas, and highways for mobile services. Nationwide carriers generally use spectrum to target businesses and Multi-Dwelling Units ("MDUs") in dense urban areas for non-mobile spectrum services. Such a business model simply does not apply to carriers serving sparsely-populated rural areas.

Rural carriers have a proud tradition of serving the public interest by offering their customers new services and by using their existing telecommunications infrastructure to facilitate the use of spectrum in an economically efficient manner. With the recent sunset of the Commission's resale rule, Commission policies should encourage rural carriers to utilize resale, as well as their own facilities, to provide rural consumers with more commercial mobile radio service ("CMRS") choices.

Over a decade ago, the Commission ensured that cellular service would reach rural America by awarding landline telephone companies, including those landline companies serving rural areas, B Block spectrum in Rural Service Areas ("RSAs"). The near ubiquity of cellular service in rural regions, as well as the large number of small, rural cellular carriers, is a testament to the success of the Commission's cellular rules and procedures. The Commission licensed the cellular spectrum in Metropolitan Statistical Areas ("MSAs") and RSAs. The use of MSAs and RSAs created a rural/metropolitan dichotomy that served the cellular market well. Carriers that were interested in serving rural customers could concentrate on these specific markets, whereas nationwide carriers could focus their attention on more profitable urban and suburban areas. In addition, the Commission developed strict cellular buildout rules that facilitated the delivery of cellular service to almost all regions of the country. OPASTCO and RTG suggest that when the Commission develops future spectrum rules, it refer back to certain aspects of the successful cellular example, especially: (1) the use of MSAs/RSAs coupled with strict buildout requirements, and (2) required contour (or "real world" coverage) maps and strict reporting guidelines for submitting underlying engineering parameters to allow the industry to "police" itself with regard to actual service provided to rural communities.

MSAs and RSAs, by definition, separate rural areas from urban areas. De-linking metropolitan areas from rural areas will allow the marketplace, through the auction process, to determine an accurate valuation for each area. In addition, companies interested in providing localized service to rural areas will not have to compete against “national” companies for licenses that include dense urban areas. A de-linking approach benefits the public and meets the mandate of Section 309(j) by allowing companies interested in providing service to more profitable populated markets to acquire MSAs without holding the surrounding rural areas hostage.

IV. The Commission Must Adopt Rural-Specific Auction Bidding Credits as Required by Statute

The FCC should adopt an independent bidding credit or other auction incentive that would aid rural telephone companies irrespective of a company’s gross revenues. While OPASTCO and RTG endorse the Commission’s use of auction benefits that assist truly small businesses,⁶ the only rural telephone companies that currently receive auction bidding credits are those that qualify as small or very small businesses.⁷ Congress, in Section 309(j) intended that

⁶ OPASTCO and RTG note that in past auctions many winners were structured to qualify as small businesses under the Commission’s rules to receive bidding credits. In reality, many of these businesses were backed by the largest nationwide carriers. The FCC needs to reevaluate its bidding credits so that truly small businesses benefit, as intended by Section 309(j), rather than big business.

⁷ The Commission’s overly broad attribution rules exclude many rural telephone cooperatives from qualifying as small or very small businesses or deter cooperatives from seeking a bidding credit by attributing the outside business interests of the cooperatives’ officers and directors. Modification of the officer and director attribution rules as requested by RTG in its pending Petition for Reconsideration will assist rural telephone companies in providing spectrum-based services. *In re Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, Petition for Reconsideration of the Rural Telecommunications Group, WT Docket 97-82 (Sept. 28, 2000).

the Commission specifically treat rural telephone companies *as a separate class* when it adopted competitive bidding requirements. Allowing only those rural telephone companies that meet the small business definition to qualify for auction bidding credits does *not* satisfy the mandate of Section 309(j).⁸

OPASTCO and RTG urge the Commission to treat rural telephone companies as a separate class of designated entity, rather than establishing one designated entity bidding credit based upon the gross revenues of a company. The Commission cannot ignore the clear language of Section 309(j) by failing to provide rural telephone companies with their own bidding credit or other bidding incentives. Section 309(j) clearly states that the FCC shall establish bidding preferences to ensure that rural telephone companies are given the opportunity to participate in the provision of spectrum-based services. OPASTCO and RTG urge the Commission to comply with this congressional mandate and adopt rules that establish an independent bidding incentive for rural telephone companies irrespective of their size.

V. Partitioning and Disaggregation Does Not Work

The FCC's reliance upon partitioning and disaggregation to foster the rapid delivery of wireless service to rural areas is misplaced. By OPASTCO and RTG's count, far less than a quarter of one percent of all the licenses sold at auction have been partitioned and/or disaggregated. Rural America will not receive the benefits of new spectrum-based services if the Commission continues to rely upon policies that have failed to achieve CMRS penetration in rural areas.

The Commission's disaggregation and partitioning rules do not serve as an incentive for license holders to "carve out" portions of their license areas for rural carriers. OPASTCO and

⁸ See 47 U.S.C. § 309(j)(3)(B) (specifically mentioning "rural telephone companies").

RTG members have been repeatedly rebuffed in their attempts to entice license holders in various services to partition their license areas or disaggregate their spectrum. According to many licensees, the administrative costs of entering into and managing the partitioning/disaggregation process outweigh the realized financial gains. Licensees are also unwilling to partition portions of their licenses because they want to retain the entire geographic area when they go to sell the system in the future. Licensees perceive that unpartitioned licenses will have a higher resale value. The Commission should reconsider its misplaced reliance upon partitioning and disaggregation and allow small, rural carriers a chance at licenses through the primary auction process.

VI. The Commission Should Eliminate its Ineffective “Substantial Performance” Requirements and Instead Adopt Strict, Meaningful, and Enforceable Performance Requirements

OPASTCO and RTG support the use of performance requirements, but only if the requirements are strict. The Commission’s use of strict rural buildout requirements in the cellular arena led to the current robust cellular service footprint that includes rural areas. A “use it or lose it” approach to spectrum use provides incentives for carriers to either buildout in rural areas or hand over the spectrum to entities ready, willing, and able to provide such service.

The Commission should refrain from repeating its recent use of the vague and nearly unenforceable “substantial service” standard. A “substantial service” requirement will not speed the delivery of new, spectrum-based services to rural areas. Rather, the vagueness of the current standard will most likely inhibit the deployment of such services to rural areas. The meaningless substantial service requirement causes rural areas to continue to go unserved when license

⁹ OPASTCO and RTG are seriously concerned about new unfunded government mandates that are expected to result from enactment of the Homeland Security Act such as priority access, emergency alerts and further CALEA requirements. Funding must be appropriated for these future mandates to assist rural carriers with compliance.

winners are able to meet the requirement by serving a small highly populated portion of a license area.

Additionally, the FCC should not set population coverage requirements. Instead, the Commission should specify a set period of time for construction to occur, such as half the original license term. After half of the term is over, any unserved area of significant size (*e.g.*, a minimum of fifty square miles) should be available for any applicant, including the licensee, to apply to serve. This will ensure that rural spectrum is not continually warehoused by carriers only interested in serving more populated areas.

VII. Band Manager Licensing

OPASTCO and RTG believe the Commission should continue to examine its band manager licensing scheme. Since partitioning and disaggregation have failed from the perspective of rural carriers, the designation of certain rural-oriented bands may be a possible solution. However, if the FCC continues to auction spectrum for small geographic license areas, the more cumbersome band manager solution may be unnecessary.

VIII. Roaming and Resale Policies Should be Revised to Ensure that Wireless Services Reach All Rural Consumers, Not Just Those Traversing Rural Highways

Experience has repeatedly shown that rural carriers are more likely to serve the entire population of a rural area, not just those located on or near the highways where shareholder-driven large carriers tend to build their networks. The FCC should recognize this fact and develop wireless policies that provide all rural consumers with a choice of providers, including those living in the small towns, farms, and remote areas off the highways. Such providers need not be limited to facilities-based carriers. Some rural carriers are able to resell larger carriers' services and extend them into less profitable rural areas by utilizing their rural infrastructure that

nationwide carriers lack. This, of course, is contingent upon large carriers agreeing to work with rural carriers to bring services to remote areas.

What little resale competition that does exist in rural markets has been threatened by the sunset of the Commission's mandatory resale rule. Larger carriers typically attempt to flex their muscle in markets containing rural carriers, oftentimes excluding small, rural carriers from the same benefits and rates they provide to their own affiliates. Without the mandatory resale rule (47 C.F.R. § 20.12(b)), rural resellers must resort to the complaint process to enforce the nondiscrimination provisions of Section 202 of the Act when confronted with discriminatory practices by large wireless carriers.

The Commission must ensure that *meaningful* service is provided in rural America, rather than service that just reaches highways. The "cream-skimming" of highways has resulted in nationwide carriers moving roaming traffic off of rural wireless carriers' networks and then raising the roaming rates charged to these same rural carriers. This leads not only to the loss of an important revenue stream for rural wireless carriers but also to their inability to recover capital expenditures and operational costs, especially those costs associated with unfunded government mandates such as the Communications Assistance for Law Enforcement Act ("CALEA"), wireless number portability, and enhanced 911 service ("E911").⁹

Without highway roaming revenue that has been supporting many rural wireless operations, rural wireless providers will receive revenue only from their small subscriber base. This subscriber base alone cannot continue to support rural infrastructure and network upgrades. Additional revenue through roaming charges or other sources is required. Failure to address this issue will result not only in fewer wireless carriers in rural areas, it will also result in a degradation or potentially a complete loss of service in some rural and remote areas. OPASTCO

and RTG urge the Commission to focus on the need for spectrum-based services in rural America and the need for policies that make such service possible in the future. OPASTCO and RTG members are providing mobile services that deliver E911 location service and other necessary public safety benefits to rural customers. Many of these services such as E911 and those provided pursuant to the Communications Assistance for Law Enforcement Act (“CALEA”) are unfunded government mandates. Since the government deems these services as vital to the nation’s public safety and security, money needs to be appropriated by Congress to fund these and any future mandates (*e.g.*, priority access service, emergency alert systems).

IX. A Stable Regulatory Environment is Essential for Rural Carriers to Obtain Funding

OPASTCO and RTG are concerned by the noticeable withdrawal of financing being made available for rural wireless construction and operations. Feedback from financial institutions that invest in rural infrastructure indicates that the FCC’s ever-changing rules and policies are one of the biggest factors in determining whether capital is available for rural wireless projects. Investors have advised OPASTCO and RTG members that they would feel more comfortable in making investments in companies that serve rural America if the Commission took a keener interest in the comments filed by rural carriers and worked harder to ensure that rural companies or those seeking to serve rural America are given: (1) more support and consideration with respect to implementation of government mandates and the appropriations necessary to fund such mandates; (2) favorable consideration with respect to the acquisition of spectrum; and (3) recognition by the Commission that in many rural and remote areas, there will not be competition because there is only enough revenue to support one provider. The realities faced by carriers seeking to serve rural areas are recognized by the

financial community and now OPASTCO and RTG implore the FCC to also recognize them when crafting rural wireless policies and rules.

Stability and assurance that rules and regulations adopted by the FCC will remain in place so that investments can be recovered is a key factor cited to OPASTCO and RTG members as they approach the financial community for support. Rural financial institutions are also concerned that the FCC's unlicensed spectrum policy not diminish the value of licensed spectrum and that the Commission continue down the road of flexible use of licensed spectrum so that rural carriers will be able to provide innovative services over the spectrum they have been successful in acquiring.

X. The FCC Should Encourage the Development of New, More Efficient Technologies in Rural Areas

RTG and OPASTCO encourage the Commission to evaluate its rules to make it simpler for new technologies to develop that will spur lower cost solutions for the deployment of services in rural America. RTG and OPASTCO members are working with software defined radio developers to determine if there is a software defined radio solution that will benefit rural America by allowing perhaps one set of wireless facilities to be constructed that can support multiple mobile voice and data technologies. RTG and OPASTCO members believe that such advancements will keep wireless costs down while supporting multiple wireless operators. This could allow competitive wireless choices in rural America without the high cost associated with building multiple wireless networks. RTG and OPASTCO believe flexibility and quick action on the part of the Commission will be instrumental in advancing technologies such as software defined radio.

XI. Conclusion

OPASTCO and RTG are encouraged by the Commission's commitment to speeding new and advanced spectrum-based services to rural America. OPASTCO and RTG will continue to work with the Commission to keep the policies that have worked, jettison the policies that have failed, and create new policies that deliver CMRS choices to rural customers as this proceeding progresses.

Respectfully submitted,

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